



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

April 29, 2022

Re: FOIA Case No. NLRB-2022-000842

Dear Travis Gasper (Josephson Dunlap LLP):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on March 31, 2022, in which you seek all records from the following *Kelly Services, Inc.* cases: 04-CA-171036, 20-CA-172971, 09-CA-184055. You assumed financial responsibility for the processing of your request in the amount of \$250.00.

We acknowledged your request on March 31, 2022. On April 14, 2022, in an email exchange with a member of my staff, you confirmed that you were seeking only the formal records and position statements in the listed cases.

Your request is granted in part and denied in part, as explained below.

A search of the Agency's electronic casehandling system, NxGen, has been conducted. This search has located 431 pages of responsive, releasable records from the requested case files, which are attached.

After a review, I have determined that portions of the records are exempt from disclosure under Exemptions 4, 6, and 7(C) of the FOIA (5 U.S.C. § 552(b)(4), and (b)(6), and (b)(7)(C)).

Specifically, redactions have been made to protect the privacy interests of individuals named in the records. The redactions are pursuant to FOIA Exemption 6, which protects personally identifiable information, the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which protects records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Specifically, a few redactions were made pursuant to Exemption 4 of the FOIA, which protects "commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). The information, which includes economic proposals, was submitted to the Agency by the employers in response to the Region's investigation of the unfair labor practice charges. Because the submitter does not

customarily release this information to the public and it is not available to the public from any other sources, the information is confidential for purposes of Exemption 4 and has been redacted. *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, 2363 (2019).

Additionally, I have determined that eight pages of records are exempt pursuant to Exemption 4 of the FOIA. Exemption 4 protects "commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). The withheld record contains confidential commercial or financial information about the employer. Specifically, the record is a memo on project management and risk, which was submitted to the Agency during the Region's investigation of the unfair labor practice charge. Because the submitter does not customarily release this information to the public and it is not available to the public from any other sources, the information is confidential for purposes of Exemption 4. *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, 2363 (2019)

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests "from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v). Consistent with this fee category, you "will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought." 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Two hours and thirty minutes of professional time were expended in searching for and reviewing for release the requested material. Accordingly, please remit \$92.50.

Payment Instructions: Due to the COVID-19 pandemic and resulting widespread employee telework at the Agency's Headquarters offices, we are no longer accepting checks or money orders as payment at this time. To submit payment for your FOIA request, please use [www.pay.gov](http://www.pay.gov). From the [www.pay.gov](http://www.pay.gov) home page, scroll down to the bottom left corner to select "Pay a FOIA Request." Click "See all options" and go to "Filter By Agency" to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Timothy Bearese, the Attorney-Advisor who processed your request, at (202) 273-3752 or by email at [Timothy.Bearese@nrlrb.gov](mailto:Timothy.Bearese@nrlrb.gov), as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may

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have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Kristine M. Minami  
FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: FOIAPublicLiaison@nrlb.gov  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: ogis@nara.gov  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt  
Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: DLCFOIAAppeal@nrlb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

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Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

*/s/ Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (431 pages)